LEGAL ASPECTS OF RESTRAINT USE IN HOSPITALS AND NURSING HOMES

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Overview

Since the passage of the Nursing Home Reform Act, the use of restraints in nursing homes has diminished as a result of regulations limiting the circumstances under which restraints can be used. Restraint use is also governed by state laws, Food and Drug Act regulations applicable to medical devices and traditional laws applying to medical practice. The use of restraints in the hospital setting has, until recently, not been directly regulated, but has been subject to negligence and medical malpractice standards. In 1996, JCAHO implemented guidelines for the use of restraints, which should serve to limit restraint use in hospitals. The Healthcare Finance Administration has issued a proposal for rules which would also govern restraint use in acute care facilities receiving medicare and medicaid funding.

These interconnecting and overlapping regulatory mechanisms should serve to greatly regulate and reduce restraint use in hospitals and nursing homes in the coming years.

Introduction

The use of restraints in nursing homes and hospitals was commonplace before passage of the Nursing Home Reform Act in 1987 (1). Physical restraint use had skyrocketed in the 1970s (2). Restraints were justified on the grounds that they prevented injuries to residents which could occur from falls, were necessary to control patients, allowed appropriate medical treatment to be administered and provided proper patient positioning (3). In addition, administrators and staff believed the use of restraints was necessary to avoid legal liability for patient injuries (4). Families of patients in nursing homes often requested restraints be used to ensure protection for their loved one. However,
empirical studies began to detail an increased risk of injuries associated with restraint use, and a growing body of literature has focused on the detrimental psychological results of their use (4)(5)(6)(7). This research, coupled with a movement in nursing homes to "untie the elderly," led to Federal regulations limiting restraint use in nursing homes and to a national restraint reduction initiative designed to assist nursing homes in becoming restraint free. In addition to federal regulations governing the use of restraints in nursing homes, virtually every state has legislation which addresses the rights of nursing home residents with regard to the use of restraints (8).

Unlike the issue of restraint use in nursing homes, until quite recently, little attention had been focused on the use of restraints in acute care facilities and mental hospitals. In 1996, JCAHO issued new guidelines governing the use of restraints in acute care facilities (9)(10)(11)(12). In late 1997, the Health Care Financing Administration (HCFA) published proposed new rules on the use of restraints in acute care facilities receiving Medicare and Medicaid funding (12). The JCAHO guidelines are beginning to shape the use of restraints in hospitals. This article will provide a brief overview of the federal and state legislation affecting restraint use in hospitals and nursing homes. Relevant Food and Drug Administration regulations will also be explained. In addition, the bases for common law liability for the use of restraints and the failure to use restraints will be described. The laws governing the use of restraints in mental hospitals have developed as a result of the unique circumstances surrounding the diagnoses of the patients, and should be the subject of a separate article (9).

**Restraints Defined**

In the nursing home setting, Government regulations define physical restraints as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body (1).

Restraints commonly used in hospitals and nursing homes include Posey vests, cuffs, and arm and leg restraints. In addition, structural impediments to a resident's movement may also be deemed to be restraints. Chairs with locking lap trays, seat positioning, wheelchair safety bars and other similar devices also fall within the definition of physical